

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 05-10214-MLW

FLORENTINO RUIDIAZ, JR.,

Defendant

**UNITED STATES' RESPONSE TO DEFENDANT'S MOTION FOR A CONTINUANCE
AND REQUEST FOR ENTRY OF AN ORDER
OF EXCLUDABLE DELAY UNDER THE SPEEDY TRIAL ACT**

The United States of America, by its attorneys Michael J. Sullivan, United States Attorney for the District of Massachusetts, and Assistant United States Attorney James E. Arnold, hereby respectfully states that it has no objection to defendant's motion for a continuance. The United States further agrees that this Court should enter an order designating as a period of excludable delay under the Speedy Trial Act the time from December 6, 2006, through and including the date of the next pretrial conference or change of plea hearing (which the United States asks be set no earlier than December 22, 2006) :

1. On November 21, 2006, this Court denied the Defendant's motion to suppress. Since this Court's ruling, counsel have engaged in plea discussions. On November 21, 2006, this Court set a change of plea hearing for December 6, 2006, and entered an order of excluding the time from November 21, 2006, through December 6, 2006, from the Speedy Trial Act calculation. However, given the Thanksgiving holiday, as well as defense counsel's trial calendar, the parties, despite the exercise of due diligence, have not yet had an opportunity to determine whether they will be able to finalize negotiations and agree upon a plea agreement.

As a result, defense counsel filed a motion to continue the "Rule 11" hearing and the United States has no objection to the granting of this motion.

3. Government counsel will be out of town the entire week of December 11-15, 2006, and will be unable to address any outstanding issues during that week. Accordingly, the Government does not anticipate being able to complete negotiations until, at the earliest, the week of December 18, 2006. Moreover, Defense counsel will need sufficient time to consult with his client, who remains incarcerated, after completing negotiations.

4. Should plea negotiations prove unsuccessful in resolving this matter, additional time will be necessary to allow respective counsel sufficient time to prepare for trial, and, in the event of trial, some lead time will be required prior to commencement of trial in order to allow prospective witnesses to arrange their holiday schedules so as to be available at trial.

5. Accordingly, the United States submits that the ends of justice would be served by the court granting Defendant's motion for continuance, that this continuance is necessary to avoid a miscarriage of justice, and that the denial of this motion would, despite the exercise of due diligence, deny the parties the reasonable time necessary for effective preparation.

Wherefore, the United States respectfully requests that the court enter an order designating the time from December 6, 2006, until the date of the next pretrial conference or change of plea hearing (which the United States asks be set no earlier than December 22, 2006)

as a period of excludable delay pursuant to the Speedy Trial Act, 18 U.S.C. §§ 3161(h)(8)(A), 3161(h)(8)(B)(i), and 3161(h)(8)(B)(iv).

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ James E. Arnold
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document(s) filed through the ECF system will be sent electronically to counsel for defendant, who is a registered participant as identified on the Notice of Electronic Filing (NEF).

/s/ James E. Arnold
JAMES E. ARNOLD
Assistant United States Attorney

Date: December 6, 2006